

**Subject: International Taxation**  
**(subject code: 353915001)**

**Basic Principles of International Tax  
Planning (Week 13)**

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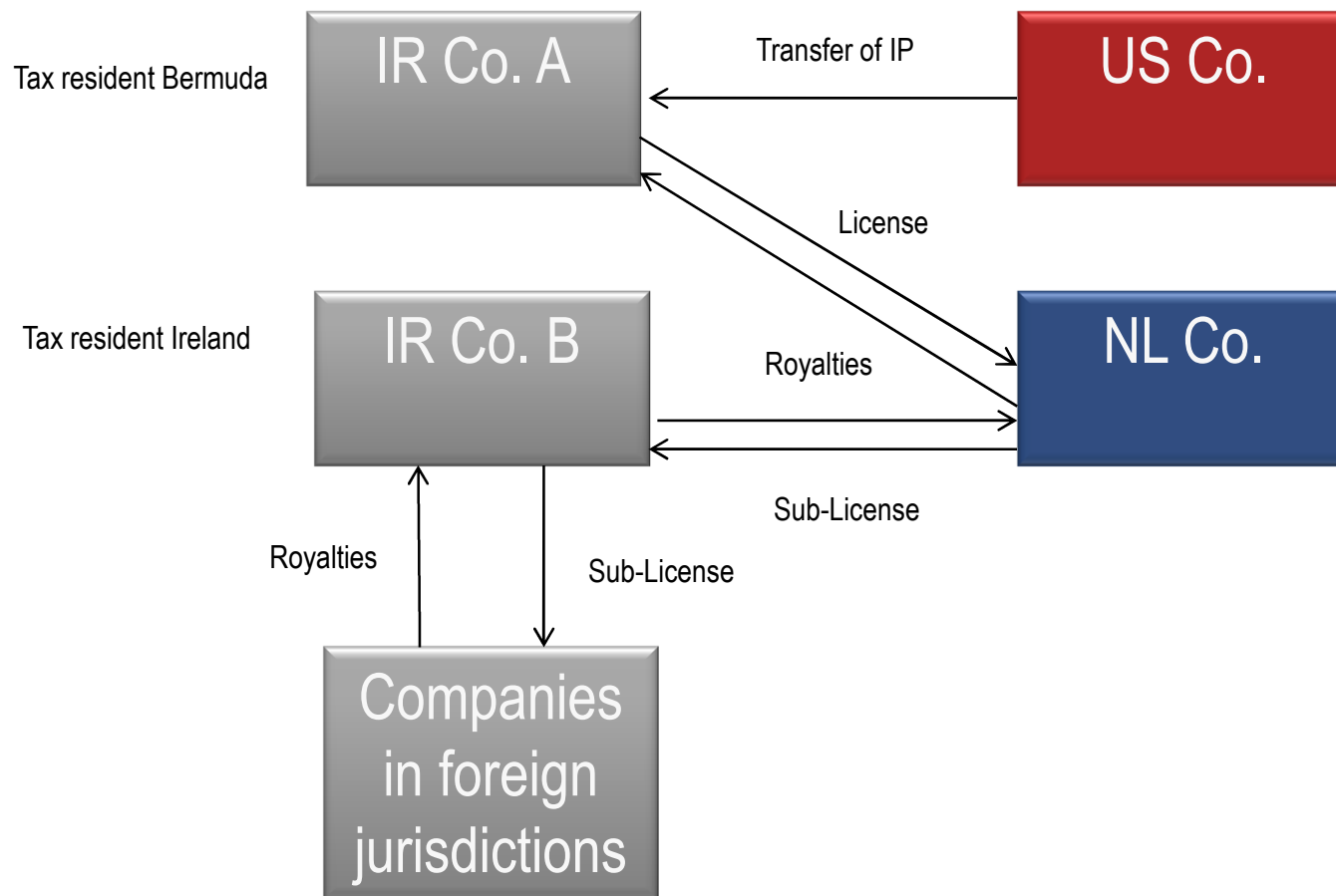
## What is International Tax Planning

- It is the art of arranging cross-border transactions with the knowledge of international tax principles to achieve a tax effective and lawful routing.
- Prime objective is to receive the after-tax flows of overseas income lawfully at minimal cost and risk.
- International tax planning deal with the different tax systems in the world.
- The tax plan must meet the business objective at minimal tax and administrative costs but also at an acceptable level of risk.
- There is no ideal or risk-free solution.
- To distinguish acceptable tax planning from unacceptable tax avoidance is difficult.

## What is International Tax Planning (Cont)

- The difference normally depends on the political and economics policies of each country.
- International tax planning must always be based on the legally acceptable used of the tax laws and tax treaties of the countries where the business is transacted.

# Google授權模式釋例



## Need for International Tax Planning

- Tax is not usually a primary or overriding factor in the decisions to engage in overseas business activities or to invest abroad.
- The decisions are based on commercial, economics, and even social and political considerations.
- Once the initial decision has been made, tax often becomes an important business consideration.
- Cross-border activities suffer a higher tax liability on a worldwide basis than domestic or one-country transactions.
- The tax payer often has to cope with inconsistent tax laws, erratic tax administration and high taxes in various jurisdictions.
- Proper tax planning is essential in an international business to reduce the distortions that arise due to the lack of harmonization in domestic tax systems.

## Opportunities for International Tax Planning

- Three levels of tax impact on cross-border transactions:
- The source or host country
- The intermediary country
- The residence or home country

## Opportunities for International Tax Planning (Cont)

The taxation in the source country may be reduced through:

- Local tax planning that optimizes the use of tax deductions, incentives, tax losses and special tax concessions available under the domestic law and tax treaties.
- Tax-exemptions from the break or fracture of the connection tax factors with either the source or the residence State (or both).
- The use of various planning techniques to ensure that the taxable profits arise outside the country.

## Opportunities for International Tax Planning (Cont)

The intermediary country taxation on remitted income flows may be reduced through:

- The use of tax treaties to reduce the withholding taxes in the host country.
- The proper selection of the offshore financial centers to minimize or avoid the corporate and withholding taxes.
- The arbitrage through a change in the nature or character of the payments made to the home country.
- The use of various tax concessions, e.g. participation exemption, EU P-S Directive for holding companies etc.
- The retention of funds offshore for reinvestment abroad or to achieve a tax deferral on remittances made to the home country.



## Opportunities for International Tax Planning (Cont)

- The taxation on profits repatriated to the home country may be reduced through:
- The use of appropriate global corporate structures that avoid, reduce or defer the tax liability.
- The optimal use of available foreign tax credits and exemptions to reduce domestic tax liabilities.

## International Tax Planning Techniques

Some common tax planning techniques using these principles are listed below:

- The review of tax provisions and compliance rules under the domestic law (“domestic law”)(運用當地有利稅法規範)
- The reduction of the pre-tax profits through deductible expenses (“tax deductions”)(認列可抵減費用)
- The use of special tax concessions for foreign capital, technology, etc. (“tax incentives”)(運用對境外資本之稅務優惠)
- The optional use of the tax loss carry-over (“use of tax losses”)(虧損扣抵)
- The provision of special deductions or exemptions to qualifying dividends (“economic double taxation”)(避免經濟重複課稅)
- The split of pre-tax profits among the various tax beneficial jurisdictions through source allocation (“profit diversion”)(利潤分配)
- The extraction of pre-tax profits from high tax countries through legitimate tax-deductible charges or expenses (“base erosion”)(降低稅基)

## International Tax Planning Techniques (Cont)

Some common tax planning techniques using these principles are listed below (cont):

- The tax deferral of foreign profits (“tax deferral”)(境外所得緩課)
  - The optimal use of foreign tax credits (“tax credits”)(外國稅額扣抵)
  - The review of exchange gains and losses in cross-border transactions (“exchange risks”)(注意匯兌風險)
  - The exemption of taxable income due to the lack of a connecting factor with a tax jurisdiction (“connecting factors”)(來源所得認定要件)
  - The use of appropriate legal structure to achieve the business and tax objectives (“legal form”)(善用不同法定架構)
  - The use of the optimal form of financing to minimize taxation (“debt or equity”)(運用借款或權益)
  - The use of “third country” tax treaties to reduce taxes (“treaty shopping”)(租稅協定\*)
- \*非租稅協定締約國之居民透過在租稅優惠國設立法律個體的方式，獲取享有租稅優惠權利。即第三國居民運用兩國的租稅條約作為獲取租稅利益。

## International Tax Planning Techniques (Cont)

Some common tax planning techniques using these principles are listed below (Cont):

- The use of tax treaties to avoid or reduce taxation (“treaty planning”)(協定規劃)
- The availability and use of advance tax rulings (“tax rulings”)(稅務預先核釋)
- The selection of tax-beneficial form of transaction or re- characterization (“tax arbitrage”)(租稅套利)
- The review of the cross-border transactions from host to home jurisdiction (“holistic planning”)(善用整體規劃)
- The effective use of advisors on tax laws and practices in various jurisdictions (“tax advisors”)(稅務顧問)
- The compliance with domestic tax law and anti avoidance measures in various jurisdictions (“anti-avoidance measures”)(反避稅措施)

## 國外稅額扣抵之應用

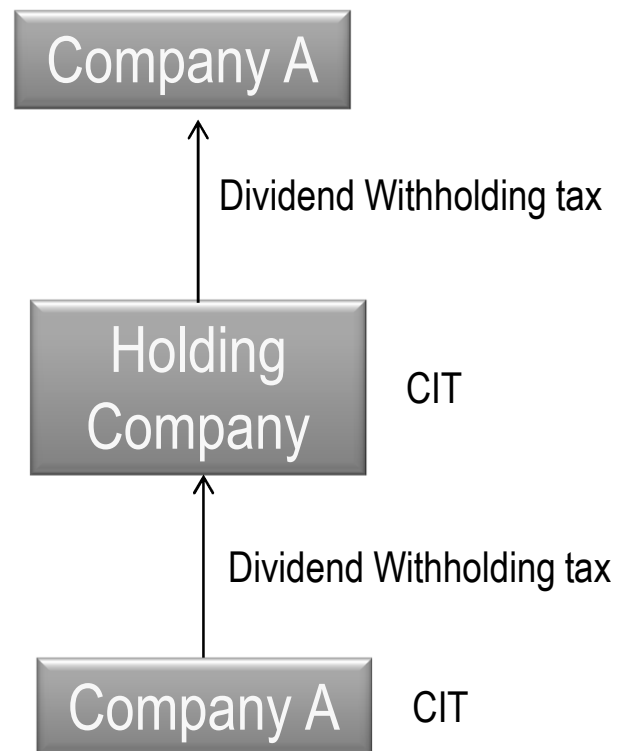
- 所得稅法第3條第2項
- 營利事業之總機構在中華民國境內者，應就其中華民國境內外全部營利事業所得，合併課徵營利事業所得稅。但其來自中華民國境外之所得，已依所得來源國稅法規定繳納之所得稅，得由納稅義務人提出所得來源國稅務機關發給之同一年度納稅憑證，並取得所在地中華民國使領館或其他經中華民國政府認許機構之簽證後，自其全部營利事業所得結算應納稅額中扣抵。扣抵之數，不得超過因加計其國外所得，而依國內適用稅率計算增加之結算應納稅額。
- 適用所得稅協定查核準則第二十六條
  - 依所得稅協定規定屬於他方締約國免予課稅之所得，或訂有上限稅率之所得，不得申報扣抵其因未適用所得稅協定而溢繳之國外稅額。

PS：未向他方締約國申請適用所得稅協定而溢繳之稅款，應向他方締約國申請退稅，不得於我國結算申報時申報扣抵該稅款。

## 國外稅額扣抵之應用

限額計算：

- 境內所得
- 中國所得
- 其他境外來源所得



## International Tax Planning- a Methodology (Cont)

- Step One: Analysis of existing database
  - Determine fully the host-to-home transaction
  - Review the domestic law and the tax treaties in each jurisdiction
  - Compute the tax liability and other costs
  - Perform cost-benefit analysis
  
- Step Two: Design of tax planning options
  - Introduce multilateral or global tax planning
  - Identify suitable foreign intermediary countries
  - Select the form of transaction, operation, or relationship
  - Examine relevant non-tax factors
  - Check the availability of advance rulings
  - List all tax planning options

## International Tax Planning- a Methodology (Cont)

- Step Three: Evaluate the plan
  - Determine the tax savings and non-tax costs if
    - The plan is not adopted,
    - The plan is adopted and succeeds, and
    - The plan is adopted and fails.
  - Compute the total costs from host-to-home
  - Select the best tax option



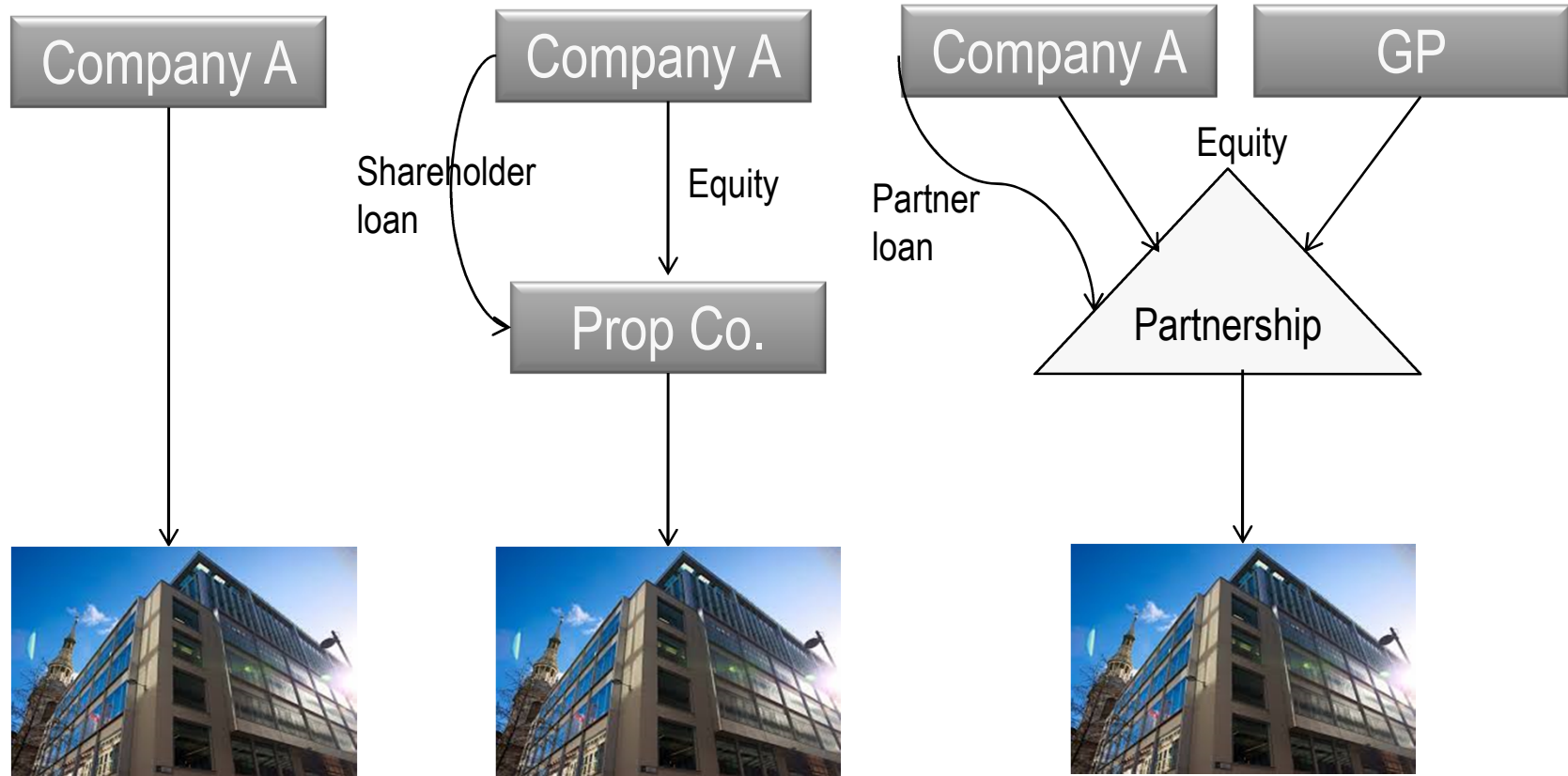
## International Tax Planning- a Methodology (Cont)

- Step Four: Debug the plan
  - Get local advice on tax laws and practice
  - Obtain advance rulings, wherever possible
  - Check the applicability of treaties and protocols
  - Determine validity of entities in the jurisdictions
  - Check compliance with anti-avoidance rules
  - Evaluate any significant risks or disadvantages
  - Review the long term benefits and costs
  
- Step Five: Update the plan
  - Review regularly changes in tax laws, treaties and tax practices
  - Amend the plan accordingly

## International Tax Structures

- The Use of Intermediary Entities
  - Use a holding company in a treaty country to own investments offshore.
  - Use an intermediary structure for a financing company that provides finance and/or treasury services to group companies. Its funds may be provided by the parent company or borrowed externally.
  - Transfer intellectual property rights to a licensing company in a nil-tax jurisdiction.
  - Set up a management services or headquarters company offshore to coordinate or supply various services to group companies at a cost plus the profit mark-up.
  - An offshore company may act as a repacking, distribution or a “turnaround” company to move some of the profits from the high-taxed onshore companies to an offshore center.

# 境外投資架構釋例



## International Tax Structures (Cont)

- Some examples of such tax planning measures are given below(Cont):
  - Avoid unintended residence of a foreign subsidiary in a tax jurisdiction.
  - Trade with a country that has a tax treaty.

## Foreign Presence without Foreign Taxes

- The tax treaties provide that no source tax is levied on active business income unless the enterprise has a permanent establishment in that country.
- The OECD MC Article 5 defines a “permanent establishment”(常設機構) as a fixed place of business through which the business of an enterprise is wholly or partly carried on.
- Tax planning involves the effective use of the exemptions under this Article to maintain a foreign presence without a permanent establishment.



## Financing of Overseas Entities

- Two key financing questions:
  - Should the investment be financed by equity or debt?
  - What should be the debt to equity ratio?
- Several additional considerations, such as:
  - Who should provide the debt?
  - What should be the currency of the debt financing ? Should it be denominated in the host, home or a third currency ?
  - Can the financing costs to acquire the subsidiary be paid out of the subsequent profits of the foreign subsidiary ?
  - What are the anti-avoidance rules relating to thin capitalization and transfer pricing?

## Financing of Overseas Entities (Cont)

- Equity financing may be more favorable in certain circumstances, e.g A dividend receipt may be preferable to interest income if there is a nil or low withholding tax on dividend in the host country and the foreign dividends are tax-exempt at home.
- Under normal circumstances, debt is preferable to equity.
- As a dividend is distributed from taxed profits and the interest is paid from pre-tax profits, the borrower can reduce his taxes by financing primarily through debt (as opposed to equity capital).
- The parent company should normally provide debt finance to its subsidiaries abroad, if
  - it pays little or no taxes on the interest income received at home,
  - the foreign withholding tax on the interest is creditable, and
  - the interest costs are deductible in the host country.

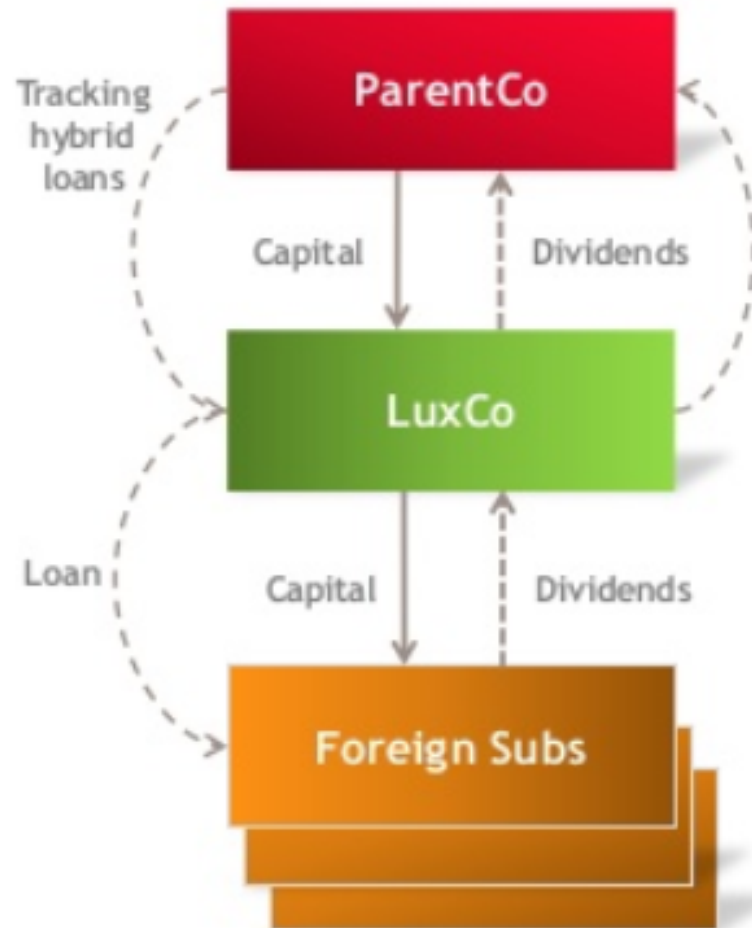
## Financing of Overseas Entities – Equity or Debt (Cont)

- A common tax-planning objective is to claim a deduction for the interest expense on the funds borrowed for the acquisition of a foreign subsidiary against the income flows generated by the funds.
- A foreign subsidiary can generally borrow funds for its use, but not for its own acquisition.
- Foreign currency debt poses currency risks on the repayment of the principal and interest.



## Tax Factors to Choose an Offshore Financial Center

- Tax benefits
- Level of taxes
- Nil or low withholding taxes
- Treaty benefits
- Tax incentives
- Anti-avoidance rules
- Stability of tax laws



## **Non-tax Factors to Choose an Offshore Financial Center**

- The political and economic stability
- The legal and commercial infrastructure
- The attitude towards commercial activities
- The professional services obtainable in the jurisdiction
- The business reputation and image
- The ease of access and good communications
- The availability of competent and trained professional staff
- The lack of exchange controls and currency restrictions

## **Non-tax Factors to Choose an Offshore Financial Center (Cont.)**

- The ease in conducting business in the country
- The protection under the domestic law
- The ease of company formation and compliance requirements
- Initial formation costs and recurring costs
- The access to capital markets and other sources of finance
- The ability to change jurisdictions (“re-domiciliation”), etc.

## International Holding Company

- A holding company in an intermediary jurisdiction allows an entity to hold and manage its investments in foreign subsidiaries.
- It may be either pure or mixed in nature.
- A pure holding company is confined to managing and holding investments only.
- While a mixed holding company can also engage in other commercial activities.
- The real economic benefits of a holding company are non-tax in nature, such as
  - ✓ the flexibility in group reorganization and global co-ordination
  - ✓ the freedom from exchange controls
  - ✓ the ability to raise group finance abroad
  - ✓ the need to protect the confidentiality of ownership

## International Holding Company (Cont.)

- The tax considerations to choose a holding company location include:
  - A wide and appropriate treaty network to minimize the withholding and other taxes in the host countries on the income and gains of subsidiaries
  - The availability of foreign tax credits in the holding company for the taxes paid by the subsidiaries, unless the income is not subject to tax
  - A low or nil effective corporate tax on the foreign income received, and no capital taxes and stamp duties on capital issues and transfers.
  - The ability to make tax-free reorganizations through the sale or liquidation of foreign subsidiaries or branches
  - The deductibility of interest payments on the funds borrowed to finance the subsidiaries against the income received from them
  - No withholding tax on the dividend and other payments made by the holding company to the home country
  - Stable tax laws and treaties, the ease of compliance requirements and a favorable attitude of the tax authorities
  - Easy qualifying conditions for the various tax concessions

## International Holding Company (Cont.)

- Some planning considerations are:
  - The holding company should be set up when the group is incorporated
  - The holding company must have legal and commercial substance to avoid unplanned tax residence in the home country
  - Anti-avoidance rules and practices need careful analysis
  - The holding company adds an additional tier in the group structure
  - The tax planner should examine the non-tax considerations when choosing an appropriate location from a commercial and management perspective
- In an ideal situation, an investor may use intermediary holding companies to extract profits from the host country at no or reduced tax cost, hold the funds at nil or no tax cost, and finally repatriate them to the home country at no or reduced cost
- Some popular locations, e.g. Singapore, Hong Kong, the Netherlands

## International Finance Company

An international finance company serve a wide range of commercial objectives, such as:

- To accumulate and use the existing group funds with greater flexibility
- To tap external source of finance
- To perform debt factoring activities
- To act as a borrowing and lending intermediary
- To manage adverse currency fluctuations and exchange controls
- To centralize control over funds through treasury management

The tax advantages arise from the ability to provide finance through debt, and not equity, to group companies. Thus,

- The interest costs are claimed as a tax-deductible expense against the high-taxed profits in the host country
- The interest income is received with low or nil withholding tax and accumulated in a tax-free or low-tax jurisdiction

## International Finance Company (Cont.)

The ideal location requires

- a low or nil withholding tax on inbound interest receipts
- low or nil corporate tax on the interest income
- nil withholding tax on their subsequent redistribution as interest or other passive income
- non-tax considerations include no exchange controls, a strong currency, efficient financial and banking facilities, access to international capital markets, ease of transfer of funds, etc.



## BEPS全球**反避稅**行動計畫

**Base**                      稅基

**Erosion**                侵蝕

**Profit**                    利潤

**Shifting**                移轉

## 為何有BEPS

雙重課稅 v.s. 雙重不課稅  
全球重大避稅案件層出不窮

國際租稅協  
定內容與規  
則未盡完備

各國所得稅  
制間存有差  
異

稅捐機關徵  
管及資訊掌  
握能力有限

G20 & OECD  
採取行動

跨國企業透過安排造成  
稅基侵蝕及利潤移轉  
(Base Erosion and  
Profit Shifting ; 簡稱  
「BEPS」)

# BEPS 簡介—BEPS 15項行動計畫

因應國際間因跨境交易安排產生的雙重不徵稅議題，於2013年7月宣布了15項稅基侵蝕與利潤移轉（Base Erosion and Profit Shifting, BEPS）行動計畫方案，並於2015年10月5日公布了稅基侵蝕與利潤移轉（BEPS）行動計畫的最終稿。

## 一致性

受控外國公司**CFC** (3)

利息及其他金融支付  
之扣除(4)

混合錯配安排(2)

有害租稅競爭(5)

## 實質性

防止租稅協定之濫用  
(6)

常設機構**(PE)**之規避  
(7)

無形資產之移轉訂價  
(8)

移轉訂價/風險與資本  
(9)

移轉訂價/高風險交易  
(10)

## 透明度

方法及資料分析(11)

揭露租稅規畫之規定  
(12)

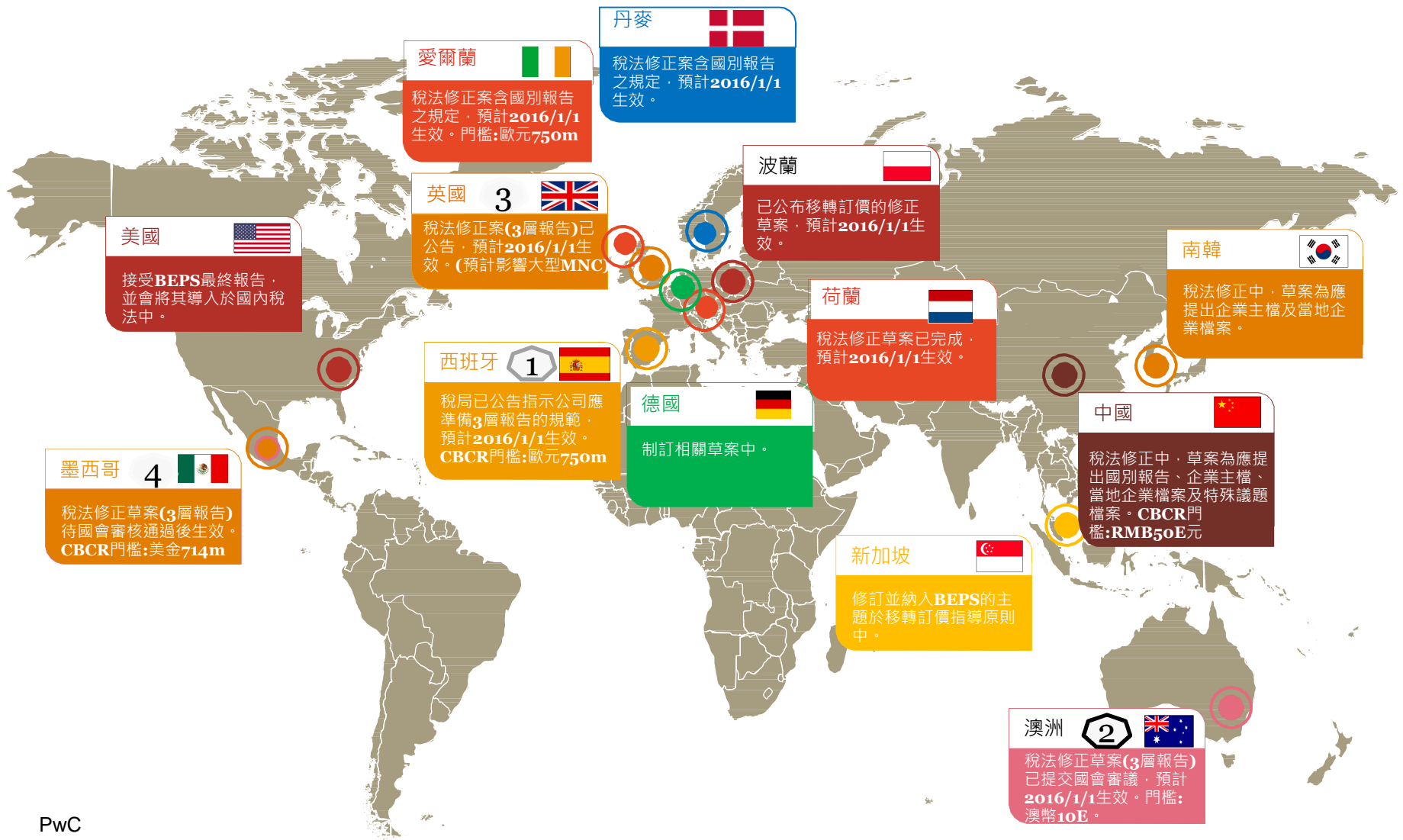
移轉訂價文據(13)

爭端解決機制(14)

數位經濟之租稅挑戰 (1)

建立執行相關計畫之多邊工具(15)

# 世界各國因應BEPS 之主要進度



## Appendix: Base Erosion and Profit Shifting (BEPS) Action Plan

Action Item	Impact / highlight of the action plan
1. Tax challenges of the digital economy	Focus on new business models resulting from the evolution of information and communication technology including several varieties of e-commerce, app stores, online advertising, cloud computing, participative networked platforms, high speed trading, and online payment services. The digital economy also creates challenges for VAT collections, PE and withholding tax issue.
2. Hybrid mismatch arrangements	Focus on designing rules to neutralize the mismatch effect of hybrid instruments and entities through domestic law and changes to tax treaties.
3. Designing effective CFC rule	Focus on the design of effective CFC rules with six building blocks: Definition of a CFC, CFC exemptions and threshold requirement, definition of income, computation of income, attribution of income and prevention and elimination of double taxation.
4. Limitations on interest deductions	Focus on limiting interest deductions: <ul style="list-style-type: none"> <li>• By reference to the amount of external interest of the MNC group allocated across group based on EBITDA/assets .</li> <li>• By reference to a fixed ratio(10%~30%) of entity's EBITDA/assets.</li> </ul>

## Appendix: Base Erosion and Profit Shifting (BEPS) Action Plan

Action Item	Impact / highlight of the action plan
5.Harmful tax practices	<p>The report focuses on two areas:</p> <ul style="list-style-type: none"> <li>• With respect to intangible property (IP) regimes, the report discusses options for a substantial activity requirement, including a “nexus” test.</li> <li>• With respect to transparency, the report discusses development of a framework for compulsory spontaneous exchange of information by tax administrations on taxpayer specific rulings and APAs .</li> </ul>
6.Addressing treaty abuse	Adoption of both a limitation on benefits (LOB) rule and a general anti-abuse rule in the form of a principal purpose test (PPT) .
7.Preventing the artificial avoidance of PE status	Focus on the changes to the definition of PE to prevent the artificial avoidance of PE status through the use of commissionaire arrangements and the activity exemptions.
8~10.Assure that transfer pricing outcomes are in line with value creation – intangibles, risks and capital, special measures	DEMPE functions– develop, enhance, maintain, protect and exploit – need to be assessed when determining if the group member is entitled to any intangible related return.

## Appendix: Base Erosion and Profit Shifting (BEPS) Action Plan

Action Item	Impact / highlight of the action plan
11.Measuring and monitoring BEPS	The report focus on the six indicator of BEPS to measure BEPS will be critical and for evaluating the impact of the BEPS Action Plan.
12.Mandatory disclosure rules	The report provides a modular framework that enables countries without mandatory disclosure rules to design a regime that fits their need to obtain early information on potentially aggressive or abusive tax planning schemes.
13.TP documentation and country-by-country reporting	Three documents (master file, local file and Country-by-Country Report) will require tax payers to articulate consistent transfer pricing positions and will provide tax administrations with useful information to assess TP risks.
14.Making dispute resolution mechanisms more effective	<ul style="list-style-type: none"> <li>• Ensure mutual agreement procedures are fully implemented and the cases are resolved efficiently and the procedures are accessible by the taxpayers.</li> <li>• Ensure the fair implementation of administrative processes that promote timely resolution of treaty-related dispute;</li> </ul>
15.Developing a multilateral instrument to modify bilateral tax treaties	<ul style="list-style-type: none"> <li>• This plan provides for an analysis of the tax and public international law issues related to the development of a multilateral instrument to enable countries that wish to do so to implement measures under BEPS and amend bilateral tax treaties.</li> </ul>

## International Taxation (Week 13)

